IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRD DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

**THE HON'BLE MS JUSTICE G.ROHINI**

**WRIT PETITION NO : 1042 of 2005**

Between:

N. Radhakrishna, S/o. Charyulu,
R/o. 23-35-46, Lakshmipuram, Vijayawada, Krishna District, Rep. by his power of Attorney Holder Mr. N. Arjunudu, S/o. Venkateswar Rao, aged about 46 years, Occ: Business, R/o. Ashoknagar, Vijayawada, Krishna District. **.....** PETITIONER

AND

1 The Government of Andhra Pradesh, Panchayat Raj and Rural Development Department, represented by its Principal Secretary, Secretariat Buildings, Hyderabad.

2 The District Panchayat Officer, Krishna-Cum-Convenor, District Level, Committee for Sand Auctions, Krishna District.

3 Thota Rambabu, S/o Sriramamurthy, aged 38 years, R/o Peddanke, Kolluru Mandal, Guntur District.

(R-3 impleaded as per Court order dated 03-02-2005 in W.P.M.P.No.1832 of 2005)

**.....**RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ, order or direction, more particularly one in the nature of Writ of Mandamus, declaring the order of the 1st respondent in Memo No. 13997/Pts.III/A3-2004-3, dated 31-12-2004 as arbitrary, illegal, contrary to G.O.Ms.No.1 Industries and Commerce dated 1-1-2001, which forms part of A.P. Minor Mineral Concession Rules 1966, without jurisdiction, violative of principles of natural justice and violative of the Fundamental Right guaranteed to the petitioner under Article 19 of the Constitution of India and consequently direct the 2nd respondent to permit the petitioner to use the ramp at 12.800 KM in Reach No.4 of the Krishna River Left Flood Bank for transportation of sand and pass such other order or orders

Counsel for the Petitioner: MR.C.V.MOHAN REDDY

Counsel for the Respondent Nos. 1 and 2: GP FOR PANCHAYAT RAJ & RURAL DEV.

Counsel for the Respondent No.3: Mr. M.L. Ali.

**The Court at the admission stage made the following:**

**O R D E R:**

Heard the learned counsel for the petitioner as well as the learned Government Pleader appearing for the respondents 1 and 2 and the learned counsel for the third respondent and perused the material on record.

The facts, in brief, are as follows:

The petitioner was granted a lease for sand quarrying in respect of Reach No.4 in the right flood bank of Krishna River at Godavarru Village, Duggirala Mandal, Guntur District. As per the notification, the notified ramp is situated at 17.200 KM. However, since that was found to be not convenient for transporting the sand, the petitioner made a request to permit him to use the ramp at 12.800 KM within the limits of Reach No.4. It appears that while the said request was under consideration, the third respondent herein who was the lessee in respect of Reach No.3 filed W.P.No.3835 of 2004 contending that the petitioner herein cannot be permitted to use the ramp at K.M.12.800 instead of the notified ramp at K.M.17.200. This Court by order dated 28-04-2004 disposed of the writ petition directing the River Conservator to dispose of the representation of the petitioner herein dated 20-02-2004 with regard to change of ramp, after giving due notice and opportunity to both the parties, within a period of eight weeks, in accordance with law. In pursuance thereof, after hearing all the parties concerned, the Executive Engineer, Krishna Central Division informed that he has no objection for change of ramp. Accordingly, the District Level Committee by resolution dated 27-07-2004, resolved to close the ramp at 17.200 K.M. and permit the petitioner to use the ramp at 12.800 K.M. and the same was communicated to the petitioner by the second respondent by proceedings dated 30-07-2004. Subsequently by order dated 24-09-

2004 the petitioner was also granted renewal of lease from 29-10-2004 to 28-10-2005.

It appears that in the meanwhile the third respondent herein filed an appeal before the Government challenging the proceedings of the second respondent dated 30-07-2004 and initially the Government stayed further proceedings. However subsequently the Government vacated the stay. Aggrieved by the same, the third respondent filed W.P.No.19228 of 2004. This court by order dated 26-10-2004 disposed of the writ petition setting aside the order of the Government and the matter was remitted to the Government to provide an opportunity to the petitioner on the report received and pass appropriate orders after complying with the requirements of the principles of natural justice. In pursuance thereof, the first respondent passed an order dated 31-12-2004 holding that there is no need to change the notified ramp from K.M.17.200 to 12.800 K.M. for transportation of sand and that the lease holder of Reach No.4 shall use the authorized ramp at K.M.12.800 only as per the Tender Conditions. The said order is under challenge in this writ petition.

The learned for the petitioner primarily contends that the impugned order was passed without affording any opportunity to the petitioner to explain his case and therefore the same is liable to be set aside on that ground alone.

On a perusal of the impugned order, it is apparent that the said order was passed without notice to the petitioner. Though the appeal was filed by the third respondent herein i.e., the lessee of the Reach No.3, the first respondent ought not to have decided the appeal without hearing the petitioner herein, since by virtue of the said order the decision of the District Level Committee dated 27-07-2004 permitting the petitioner to use the ramp at K.M.12.800 was virtually set aside. Before passing such an order which adversely affects the rights accrued in favour of the petitioner, the first respondent ought to have issued a notice to the petitioner and ought to have decided the appeal after considering his case. Since no such procedure is

followed, I am of the opinion that the impugned order cannot be sustained and the same is liable to be set aside.

The learned counsel for the petitioner has brought to my notice the fact that the lease in respect of Reach No.3 has expired on 09-01-2005 and even the application made by him seeking renewal of the lease has already been rejected vide proceedings dated 02-02-2005 of the District Panchayat Officer and therefore, the lessee of Reach No.3 has no *locus standi* in the matter.

However, the learned counsel appearing for the third respondent submits that no such orders have been communicated to the third respondent so far and at any rate since the proceedings have been taken up by the Government on an application made by the lessee of Reach No.3, it would be appropriate to afford an opportunity to the third respondent as well while deciding the appeal.

For the aforesaid reasons, the impugned order dated 31-12-2004 is set aside and the writ petition is disposed of directing the first respondent to consider the matter afresh, after affording due opportunity to both the petitioner as well as the third respondent and to pass appropriate orders, in accordance with law, as expeditiously as possibly, preferably within a period of four weeks from the date of receipt of a copy of this order. No costs.

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**( G. ROHINI, J)**

Date: 03-02-2005

ghn

To

1 The Principal Secretary, the Government of Andhra Pradesh, Panchayat Raj and Rural Development Department, Secretariat Buildings, Hyderabad.

2 The District Panchayat Officer, Krishna-Cum-Convenor, District Level, Committee for Sand Auctions, Krishna District.

3 Two CCs to the Government Pleader for Panchayat Raj & Rural Development, High Court Buildings, High Court of A.P., Hyderabad.

4 Two CD copies.